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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,237	10/27/2003	Wesley Caudill	31035	4331

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EXAMINER

HARPER, TRAMAR YONG

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary	Application No.		Applicant(s)	
	10/695,237		CAUDILL, WESLEY	
	Examiner		Art Unit	
	Tramar Harper		3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/27/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by May (US 4,715,602).

Claims 14-19: Figures (1, 6, & 8) disclose the limitations of the track apparatus that comprises of a track segment, connector, elongated member with parallel rails, co-planar track surfaces, etc.

Claims 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolf (US 3,502,332).

Claims 14-19: Figures (1, 3, 5, & 12) disclose the limitations of the track apparatus that comprises of a track segment, connector, elongated member with parallel rails, co-planar track surfaces, etc.

Claims 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Myers (US 5,651,736).

Claims 14-19: Figures (1, 3, 5, & 12) disclose the limitations of the track apparatus that comprises of a track segment, connector, elongated member with parallel rails, co-planar track surfaces, etc.

Claims 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbert (US 4,077,628).

Claims 14-19: Figures (1-4) disclose the limitations of the track apparatus that comprises of a track segment, connector, elongated member with parallel rails, coplanar track surfaces, etc.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dennis (US 4,872,680) in view of McKay (US 4,605,229) in view of Smith III et al. (US 4,247,107) in further view of Sheldon (US 3,403,908).

Claims 1 & 3: Dennis discloses and electric drag strip that comprises of:

a starting tower and a starting gate having a starting light;
a finish gate having engagement flags triggered by sensors;
a track assembly connected between said starting gate and finish gate;
a remote activation means for releasing the respective racing cars; and
every component of the track is electronically interconnected (Abstract, Col. 2:9-20, Col. 3:9-13, Col. 4:1-21).

Dennis includes the above, but excludes an release assembly, information display, an electronic sound effect generator, and a foul light indicator. McKay teaches a

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toy drag strip that includes a starting gate lighting assembly with flag release arms. The flag release arms are at the horizontal position preventing any car from prematurely starting. Once the green or "go" state is reached the starting gate raises the flags and the cars are allowed to race (Abstract). Smith III teaches an electronic racing track that comprises of an information display and a sound generator for generating sounds related toward a simulated race (Abstract, Col. 4:18-24, Col. 5:20-30). Sheldon teaches a toy racetrack set with a starting the gate. The starting gate includes vertically aligned colored lights for pre-staging, staging, starting and foul indicators for respective cars (Abstract, Col. 2:35-50). It would have been obvious to one of ordinary skills at the time of the invention to modify the race track system of Dennis with a release assembly, as taught by McKay, a information display and sound generator, as taught by Smith III, and a foul light indicator on the starting gate, as taught by Sheldon for purposes of providing new and improved aspects of the racing simulation. Such aspects would make the racing game appear more realistic and increase player popularity and interest in the game (Dennis - Col. 1:55-60).

Claim 2, 9: It would have been an obvious matter of design choice well within the capabilities of one skilled in the art to have an inclined track surface with support posts. (Myers (US 5,651,736: Fig. 1) & Brigham et al (US 3,735,923: Fig. 1)).

Claim 4: McKay teaches a toy drag strip that includes a starting gate lighting assembly with flag release arms. The flag release arms are at the horizontal position preventing any car from prematurely starting. Once the green or "go" state is reached the starting gate raises the flags and the cars are allowed to race (Abstract, Col. 3:15-65, Figs. 1-4).

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Claim 5: In regards to Dennis in view of McKay (release assembly), Dennis discloses a button to initiate the start gate (Col. 4:40-50), however it is well known in the art to use other means of actuating a device such as a remote means. Dennis discloses a remote means of activating each car (Fig. 1 item (14)). As such, it would be obvious matter of design choice well within the capabilities of one skilled in the art to have a remote push pedal to activate the start gate/car release assembly as stated above (Freyde (US 3,231,988) Push Pedal (Col. 2:46-52)).

Claim 6: Dennis discloses the finish gate comprises of flags that are extended by the triggering of photoelectric eyes corresponding to the car passing the eye (Abstract, Col. 5:60-Col. 6:6). It would be an obvious matter of design choice well within the capabilities of one skilled in the art to include a light means triggered by a respective or winning car (McRoskey (US 3,565,430) (Abstract, Col. 4:5:10)).

Claim 7: Dennis discloses the tracks as being securely attached and the metal contact rails transmit electricity throughout the track (Col. 4:15-20).

Claim 8, 10: Smith discloses an electronic control circuit or power module (Fig. 4) and power supply to control racing apparatus (Abstract, Col. 4:5-10). It is an obvious matter of design choice well within the capabilities of one skilled in the art to use storage batteries rather than a main power supply.

Claim 11: In regards to Dennis in view of McKay (release assembly), Dennis discloses a button to initiate the start gate (Col. 4:40-50).

Claim 12: In regards to Dennis in view of McKay (release assembly), McKay discloses manual balance finish flag means with a pivot (Col. 8:12-30).

Claim 20: It is well known in the art for toy car used with racing sets to have light sources such as headlights as an illumination means.

Claims 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dennis (US 4,872,680) in view of Smith III et al. (US 4,247,107) in further view of Sheldon (US 3,403,908).

Claim 13: Dennis discloses a race car game that comprises of turning a race track on, position cars in a starting gate, activating sequential staging lights by push button, releasing cars by remote trigger means, and a finish gate with finish flag indicators or targets (see above with respect to Claim 1). However, Dennis excludes a foul light indicator, independent illumination of winner light on finish gate, elapsed time of winning car, and a foot switch capable of actuating the sequential light countdown and the releasing of cars. Smith III teaches an electronic racing track that comprises of a information display and a sound generator for generating sounds related toward a simulated race (Abstract, Col. 4:18-24, Col. 5:20-30). The information display displays lap/race time of the cars and the winning car (Col. 5:20-30, Col. 15:29-36). Sheldon teaches a toy racetrack set with a starting the gate. The starting gate includes vertically aligned colored lights for pre-staging, staging, starting and foul indicators (premature starts) for respective cars (Abstract, Col. 2:35-50). It is well known in the art to use different types of triggers for remote actuators of different control devices. As such, pedal switches are well known in the art. Thus, it would have been obvious to one of ordinary skill at the time of the invention to implement corresponding car pedal switches to the above race game for purposes of actuating the sequential light countdown and for

releasing the respective car. Furthermore, it would have been obvious to one of ordinary skills at the time of the invention to modify the race track system of Dennis with a information display and sound generator, as taught by Smith III, and a foul light indicator on the starting gate, as taught by Sheldon for purposes of providing new and improved aspects of the racing simulation. Such aspects would make the racing game appear more realistic and increase player popularity and interest in the game (Dennis - Col. 1:55-60).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Glass (US 2,853,301) & Brigham (US 3,735,923) teach a toy inclined racetrack.

Copper (US 3,618,947) teaches a start and finish gate comprising of a release assembly and a winner light indicator.

Morrison (US 3,648,454) teaches a timing display for a toy racetrack.

Neuhierl (DE 1703878) teaches a timing display and lap counter tower for a toy racetrack.

DeAnda (US 4,108,437) teaches a car toy release assembly.

Nagel (US 4,291,878) & Tucker (US 3,707,802) teaches a starting gate with delayed sequential lights for a toy racetrack.

Neuhierl (US 4,364,566) teaches a toy racetrack with penalty points and a sound generator.

Krauter (DE 4114505) teaches a toy racetrack with a sound generator.

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Hyden (US 3,315,632) teaches a toy racetrack finish gate with winning flag indicator.

McRoskey (US 3,565,430) teaches a racetrack with a finish gate that comprises of winning light indicator.

Freyde (US 3,231,988) teaches a racing game with a pedal actuator for releasing respective racing car.

Lee (US 4,438,590) teaches racing cars for toy racetrack sets that comprises of automatic head lights as an illumination means.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tramar Harper whose telephone number is (571) 272-6177. The examiner can normally be reached on 7:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TH

9/27/06



JOHN M. HOTALING, II
PRIMARY EXAMINER